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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,041	01/16/2001	James Phillip O'Reilly	FDN-2238/CONT	4266

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12/19/2002

William J. Davis, Esq.
Legal Dept., Bldg. 10
INTERNATIONAL SPECIALTY PRODUCTS
1361 Alps Road
Wayne, NJ 07470

EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT

PAPER NUMBER

1761

5

DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/761,041

Applicant(s)

O'REILLY, JAMES PHILLIP

Examiner

Curtis E. Sherrer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

With regard to the issue contained in the Request for Assignment (Paper #4), the examiner again sincerely apologizes for the problems caused by his absence during the scheduled interview. During a discussion of the issue with Supervisory Patent Examiner Cano, it was agreed that SPE Cano would be available to attend any interviews conducted during the prosecution of the instant application.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10-13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants presented new claims containing the phrases "continuous process" and "periodically regenerating fresh PVPP" and no specificational basis for these limitations was found. Further, the specification does not provide basis for the regenerated PVPP (of step (e)) having "a particle size of at least 10 μm " (as found in step (a)).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

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Claims 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for the phrase "the main flow" found in claim 10. Claim 10 is also indefinite because the scope of the phrase "suitable washing" is not known.

Claim 12 is indefinite because there is no antecedent basis for the phrase "the particle sizes."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Westermann *et al.* (U.S. Pat. No. 4,166,141)(hereinafter Westermann), alone, or in view of applicant's admissions (instant specification, pages 1-3).

Westermann teaches the chill stabilizing of a malt beverage whereby a vessel 1 contains PVPP having a size of about 1mm and beer flows up through said vessel in a continuous fashion. The beer exits from through line 6 to a "wash station 7" that includes a solid-liquid separation device such as a filter or centrifuge. The PVPP concentrate then flows through line 10 to a regeneration stage 11 where the PVPP is washed with sodium hydroxide to remove the absorbed material. The regeneration station also contains a filtration device. This process removes

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proteinaceous material and tannins to eliminate the development of chill haze (col. 2, lines 15 to 68).

Westermann discloses that which is cited above but does not teach the amount of PVPP that would be used, or the amount of PVPP that is removed by the centrifuge.

It would have been obvious to one of ordinary skill in the art to vary the amount of PVPP used since it is well within the skill of a brewmaster to optimize and adjust the amount of a clarifying agent to produce the desired end product. Further, it is considered that it would be an obvious modification to optimize the amount of PVPP removed by the centrifuge (by varying the flow speed) so that the resultant product would have the requisite clarity.

The fact that applicant now claims "the main flow" rather than --a main flow-- is not seen as further distinguishing the claims because the scope of the phrase is still broad. Further, the Board stated on page 7 of their Decision, "[I]ndeed the only 'main flow' of a beverage in Westermann which includes the combination of beer and PVPP is found in line 6 of Westermann."

The Board also stated, on page 4 of their Decision, that the "'background' prior art raises the question as to whether or not it would have been obvious to a person of ordinary skill in this art at the time of appellant's invention to utilize a centrifuge in place of the prior art filter system." Therefore, in the alternative, it would have been obvious to one of ordinary skill in the art to modify the Westermann process so that the entire quantity of beer is processed using a centrifuge because Westermann teaches that filters and centrifuges are equivalents (col. 3, lines 3-11) and the prior art acknowledges that beer is commonly filtered to remove PVPP.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read 'C. E. Sherrer', with a stylized, flowing script.

Curtis E. Sherrer
Primary Examiner
December 16, 2002